Supreme Court, U. S.
FILED
MAR 27 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

No. 78-1312

ALLEN H. SMITH,

Petitioner,

vs.

COUNTY OF YORK,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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INDEX.

	Page
Argument	1
I. Was Petitioner deprived of due process when the local Court Judges failed to recuse themselves, and the local Court failed to give Petitioner a hearing on the issue of disqualification?	1
II. Did the Court err in interpreting Section 1555-2 of the County Code so as to apply to agents, when the statute used the term County officers, and in so doing impaired the obligation of existing contracts between the Petitioner and the State and Local Municipalities?	3
III. Did the Appellate Court deprive the Petitioner of substantive due process in determining that the local Court had jurisdiction of a declaratory judgment proceeding?	4
Conclusion	5

CASES CITED.

Frestad v. Travelers Indemnity Co., 452 Pa. 417 (1973)	5
Wallace v. Jameson, 179 Pa. 98	2
Wilshire v. Penn Overall Supply Co., 227 Pa. Superior Ct. 30 (1974)	5

STATUTES.

Act of July 25, 1963 (Declaratory Judgment Act) P.L. 305, 12 Purdon's Statutes 831, as amended	5
Act of January 25, 1966, P.L. 1556, Section 3, which added Section 1555-2 to the County Code (16 Purdons Statutes 1555-2)	3

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ARGUMENT

I. Was Petitioner deprived of due process when the local Court Judges failed to recuse themselves, and the local Court failed to give Petitioner a hearing on the issue of disqualification?

On May 7, 1973 the Respondent, County of York, filed its Petition for Declaratory Judgment in this case. The Petitioner, Allen H. Smith, filed a Petition requesting that a jurist from outside York County preside specially in this case stating that since he was a former County official and the fact

that the York County Judges were involved in litigation with the County Commissioners that it would be appropriate for the Judges of York County to have a jurist from another County preside.

The President Judge of York County Common Pleas Court handed down an order on November 24, 1974 stating that the Petitioner had not alleged sufficient facts to require all members of the Court to disqualify themselves in this case, no such request having been made by the Petitioner and no prejudice to either party appearing, the prayer of the Petition was refused and the Court directed that the case be decided by a panel of at least two (2) judges of the York County Courts. An exception was noted for the Petitioner; however, no appeal was taken nor was argument requested on the exception by the Petitioner.

The Petitioner failed to appeal the Order of the Court even though an exception was granted him. In addition, the Petitioner failed to show that the York County Judges had interest bias or prejudice and the Appellate Courts in Pennsylvania have consistently held that if the judge feels he can hear and decide a case fairly and without prejudice, his decision will be final unless there is an abuse of discretion (See *Wallace v. Jameson*, 179 Pa. 98).

The Petitioner having failed to meet the requirements as set forth by the Appellate Courts and having failed to request a hearing and not having taken an appeal, the Petition should be dismissed.

II. Did the Court err in interpretating Section 1555-2 of the County Code so as to apply to agents, when the statute used the term County officers, and in so doing impaired the obligation of existing contracts between the Petitioner and the State and Local Municipalities?

The Petitioner assumes a fact that is not of record or in existence in that there were no contracts with him or anyone else.

The Petitioner by virtue of being the elected Recorder of Deeds, collected monies for transfer stamps required on deeds by virtue of action of the Pennsylvania Legislature and ordinances enacted by officials of the various local municipalities in York County.

The Act of January 25, 1966, P. L. 1556 Section 3, which added Section 1555-2 to the County Code (16 Purdons Statutes 1555-2) provides as follows:

> "Each County officer shall pay all commissions received by him from the Commonwealth of Pennsylvania and from any policital subdivision in excess of Seven Thousand Five Hundred ($7,500.00) Dollars in any calendar year to the general fund of the County for the use of the County."

Petitioner claims there is a distinction between commissions received by County officers and commissions received by an agent of the Commonwealth or an agent of local municipalities. However, it is to be noted that the statute limits all commissions received "from the Commonwealth of Pennsylvania and from any political subdivision."

Commissions would not be payable if the County officer was not performing services and consequently an agent of the payer for the purpose of such work and compensation.

The language of the statute applies to the Petitioner and it is clear that he is reaching for distinctions that have no justification in law or fact.

Since the statute applies to the Petitioner, it becomes the duty of the Court to consider this act, and the limitation upon commissions is not a taking without due process of law, but a restriction in accordance with such process.

III. Did the Appellate Court deprive the Petitioner of substantive due process in determining that the local Court had jurisdiction of a declaratory judgment proceeding?

Relief by way of declaratory judgment was proper in this case. The Respondent filed a Petition for Declaratory Judgment to determine what portion of fees of which the Petitioner had collected was properly his. While admittedly the Petition did not set forth specifically the existence of an actual controversy or antagonistic claim, such deficiency was cured by the Petitioner's conduct when he failed to file Preliminary Objections to the Complaint and raised no exceptions to the pre-trial order of the Lower Court which set forth the facts necessary for the resolution of the Petition.

The Appellate Court looking at Petitioner's conduct was satisfied that the requisite antagonistic claims and imminent litigation were present.

The right of the Respondent to obtain a Declaratory Judgment was only objected to when the Petitioner filed exceptions to the Opinion and Declaration of the Lower Court.

To the extent that this objection is procedural, the Petitioner has waived the same by failing to file any objections until after the declaration was filed. To the extent

that these exceptions question jurisdiction, which cannot be waived, they must be overruled in that the Appellate Courts in construing the Declaratory Judgment Act (Act of July 25, 1963, P.L. 305, 12 Purdon's Statutes 831, as amended) has consistently held that the statute was intended for the purpose of settling uncertainty and insecurity with respect to rights, status and other legal relations of the parties. See *Frestad v. Travelers Indemnity Co.*, 452 Pa. 417 (1973); *Wilshire v. Penn Overall Supply Co.*, 227 Pa. Superior Ct. 30 (1974).

Conclusion

The Petitioner having failed to raise any constitutional questions, the request for a Writ of Certiorari should be denied.

Respectfully submitted,

LEWIS P. STERLING,
Attorney for Respondent.